on such a point may differ, but it is the opinion of the Registrar (or Assistant Registrar) that the law provides shall count unless, as I have said before, he can be shown to have made some obvious error, or to have exercised his discretion in that regard capriciously or mischievously, or simply to have followed some one else's advice or instructions and not to have exercised any discretion at all. A reference to Order 65, rule 27 (44, 45 and 48) of the Rules of the English Supreme Court will serve to mitigate any disappointment that may be felt at the rejection of this appeal.

Appeal dismissed.

In re S.N.V.S.M. LETCHUMANAN CHETTY

Ex parte R.M.K.R.V. FIRM

[O.C.J. (de Buriatte J.) October 12, 1936]
[Perak Bankruptcy No. 15 of 1936]

Enforcement of Bankruptcy Orders — Set-off — Civil Procedure Code (Cap. 7), ss.92(ii), 253, 262 and 343 and Bankruptcy, r.67.

The *R.* firm had obtained a decree for $3,821.69, interest and costs against *L.* in Kuala Lumpur in 1932, which, being unsatisfied, had been sent to Ipoh for execution. The *R.* firm took bankruptcy proceedings against *L.*, which were dismissed with costs. When the costs were taxed, the *R.* firm applied for execution by set-off of the costs, which amounted to $946.75, against their decree, and *L.* issued a judgment debtor summons on the managing partner of the *R.* firm. The Registrar adjourned the application for execution to the Judge and the application and summons were heard together.

Held: following *Re Chong Fong Sen; ex parte Phuman Singh,* [1931-32] F.M.S.L.R. 340; [1932] 1 M.L.J. 140, that the set-off should be allowed, and the judgment debtor summons was therefore bad.

F. A. Briggs (*G. Terrell* with him) for the R.M.K.R.V. Firm:

The application for execution is *ex parte,* but affects the validity of the judgment debtor summons. The bankruptcy order and allocatur are together enforceable as a "judgment" Bankruptcy Rule 67. This rule is copied from English Bankruptcy Rule 91 and "judgment" has its English meaning. It is for this purpose the equivalent of a decree under the Civil Procedure Code, sections 2 and 216 to 221. Judicature Act, 1925, section 225. *L.* has correctly treated his order as a decree by taking out a judgment debtor summons under section 343, Civil Procedure Code. The bankruptcy order is therefore subject to set-off under section 262 of the Civil Procedure Code as if it were a cross decree. The judgment debtor summons is an application for execution and the conditions of section 262 are fulfilled; but where it is sought to obtain set-off an application by the holder of the smaller decree is not in any event necessary. The section is mandatory. It overrides rights of third parties in the bankruptcy order. *Re Chong Fong Sen, supra,* shows that the English rules as to set-off in bankruptcy matters do not apply in this country. The Court here is sitting both in bankruptcy and in its ordinary civil jurisdiction.

B. K. Das for S.N.V.S.M. Letchumanan Chetty. Section 262 is applicable only where there are two suits. The bankruptcy proceeding is not a suit. The judgment debtor summons is not an application for execution, which can only be made under section 253 of the Civil Procedure Code. The absenceof such application renders section 262 inapplicable. The judgment debtor summons, although issued under section 343, is a proceeding in bankruptcy and the decrees are not in the same Court for the purposes of set-off. English authorities show that the rule against set-off is based in part on the rights of solicitors to a lien: *Re Adams* (1880) 14 Ch. D. 37; *Re Bassett* [1896] 1 Q.B. 219, and *Re Drummond,* [1909] 2 K.B. 622. No set-off is allowed on insolvency proceedings in India though the Civil Procedure Code applies. *Mulla* on Insolvency. Insolvency Rules 44 and 203. Section 92(ii) of the Civil Procedure Code shows that set-off is subject to solicitors' lien. Here there is an equitable lien, or an equitable right in the order.

[De Buriatte J. — Cases such as *Pringle* v. *Gloag* (1879) 10 Ch. D. 676 show that there may be an equitable set-off].

The solicitors' right is to be preferred. *Ex parte Wagner,* 2 F.M.S.L.R. 10. *Re Chong Fong Sen, supra,* was an application for equitable set-off. Here I have the better equity.

F. A. Briggs in reply.

De Buriatte J.: The Court is now sitting both in bankruptcy and in what I may loosely call its common law jurisdiction. Cases such as *Re Bassett, supra,* depend on the antagonistic relations obtaining before the Judicature Acts between the different superior Courts in England and their reluctance to give effect to one another's orders. They are therefore inapplicable in this country, though in England they were saved by the provision of the Judicature Acts that the old practice should continue in force, unless expressly altered. The bankruptcy order, with the allocatur made thereunder, is for all purposes of its enforcement to be considered as equivalent to a decree. There are therefore two decrees capable of execution in the same Court at the same time. I am of opinion that the decision in *Re Chong Fong Sen, supra,* was right and shall follow it. The R.M.K.R.V. firm's application for execution by setting off under section [281] 262 of the Civil Procedure Code the monies due by the firm to Letchumanan under the bankruptcy order and allocatur will be allowed. Satisfaction will be entered upon the bankruptcy order and allocatur. It follows that there is then no unsatisfied decree upon which the judgment debtor summons could issue, and it is therefore bad and will be struck out. Costs must follow the event. [281]

Order accordingly.

FOO YIN FONG & ANOR. v. YEW CHEE SEONG

[C.A. (Terrell Ag. C.J., Whitley Ag. C.J. (S.S.) and Aitken J.) September 9, 1936]
[Perak Civil Appeal No. 10 of 1936]

Mining Enactment (Cap. 147), s.97 — Powers of Warden to cancel sub-lease — Effect of Tin and Tin-ore (Restriction) Enactment (Cap. 95) on such powers.

Although the powers of the Warden of Mines under section 97 of the Mining Enactment (Cap. 147) have been necessarily modified by the coming into force of the Tin and Tin-ore (Restriction) Enactment (Cap. 95) the Warden's discretionary power to cancel sub-leases under and in accordance with the provisions of that section still survives.